Food and Drug Administration
Rockville MD 20857

APR 2 6 ....

Re: Arixtra
Docket No. 02E-0098

The Honorable James. E. Rogan
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
Box Pat. Ext.
P.O. Box 2327
Arlington, VA 22202

Dear Director Dickinson:

This is in regard to the application for patent term extension for U.S. Patent No. 4,818,816 filed by Sanofi-Synthelabo, Inc. under 35 U.S.C. § 156. The human drug product claimed by the patent is Arixtra (fondaparinux sodium), which was assigned new drug application (NDA) No. 21-345.

A review of the Food and Drug Administration's official records indicates that this product was subject to a regulatory review period before its commercial marketing or use, as required under 35 U.S.C. § 156(a)(4). Our records also indicate that it represents the first permitted commercial marketing or use of the product, as defined under 35 U.S.C. § 156(f)(1), and interpreted by the courts in *Glaxo Operations UK Ltd. v. Quigg*, 706 F. Supp. 1224 (E.D. Va. 1989), *aff'd*, 894 F. 2d 392 (Fed. Cir. 1990).

The NDA was approved on December 7, 2001, which makes the submission of the patent term extension application on January 29, 2002, timely within the meaning of 35 U.S.C. § 156(d)(1).

Should you conclude that the subject patent is eligible for patent term extension, please advise us accordingly. As required by 35 U.S.C. § 156(d)(2)(A) we will then determine the applicable regulatory review period, publish the determination in the *Federal Register*, and notify you of our determination.

Please let me know if we can be of further assistance.

Sincerely yours,

Jane A. Axelrad

Jane A. Axelrad
Associate Director for Policy
Center for Drug Evaluation and Research

cc: Paul E. Dupont
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